[JOINT COMMITTEE PRINT]

DESCRIPTION OF H.R. 701 ("COMPUTER CONTRIBUTION ACT OF 1983")

SCHEDULED FOR A FIELD HEARING
(SAN FRANCISCO, CALIF.)

BEFORE THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS

ON NOVEMBER 11, 1983

PREPARED BY THE STAFF

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INTRODUCTION

The Subcommittee on Select Revenue Measures of the House Committee on Ways and Means has scheduled a public hearing in San Francisco, California, on November 11, 1983, on H.R. 701 (the "Computer Contribution Act of 1983").

H.R. 701 would provide an augmented charitable deduction for contributions, made by corporations during 1984, of certain newly manufactured computers to primary or secondary schools. The bill was introduced by Subcommittee Chairman Stark, and is cosponsored by Messrs. Shannon, Archer, Flippo, and Anthony, and others.

The first part of this pamphlet is a summary. The second part is a more detailed description of the bill, including present law, prior Congressional action, explanation of the bill, and effective date.

I. SUMMARY

Present law

Under present law, the amount of charitable deduction otherwise allowable for donated property generally must be reduced by the amount of any ordinary gain which the taxpayer would have realized had the property been sold for its fair market value at the date of the contribution (Code sec. 170(e)). For example, a manufacturer which makes a charitable contribution of its inventory generally may deduct only its basis in the property.

However, under a special rule enacted in the Economic Recovery Tax Act of 1981 (P.L. 97-34), corporations are allowed an augmented charitable deduction for donations of newly manufactured scientific equipment to a college or university for research use in the physical or biological sciences (sec. 170(e)(4)). This increased deduction generally equals the sum of (1) the corporation's basis in the donated property plus (2) one-half of the unrealized appreciation (i.e., one-half of the difference between the property's fair market value determined at the time of the contribution and the donor's basis in the property). However, in no event is the deduction under the special rule allowed for an amount which exceeds twice the basis of the property.

H.R. 701

The bill would provide an augmented charitable deduction for contributions, made by corporations during 1984, of certain newly manufactured computers to primary or secondary schools for use at the school directly in the education of students. For qualifying contributions, the augmented charitable deduction generally would equal the sum of (1) the corporation's basis in the donated computer plus (2) one-half of the difference between the fair market value of the computer at the time of the contribution and the corporation's basis. However, in no event would a deduction be allowed under the bill for any amount which exceeded twice the property's basis.

The augmented deduction rule provided by the bill would be effective for taxable years ending after 1983, with respect to qualifying contributions of computer equipment made during 1984.

II. DESCRIPTION OF THE BILL

Present Law

General reduction rule for donations of property

In general, the amount of charitable deduction otherwise allowable for donated property must be reduced by the amount of any ordinary gain which the taxpayer would have realized had the property been sold for its fair market value at the date of the contribution (Code sec. 170(e)).

Thus, a donor of appreciated ordinary-income property (property the sale of which would not give rise to long-term capital gain) generally may deduct only the donor's basis in the property, rather than the full fair market value of the property. For example, a manufacturer which donates a product from its inventory generally may deduct only its cost for the item.

Special rule for certain research equipment donations

Under a special rule, corporations are allowed an augmented charitable deduction for donations of newly manufactured scientific equipment or apparatus to a college or university for research use in the physical or biological sciences (sec. 170(e)(4)), added by the Economic Recovery Tax Act of 1981).[1]

This increased deduction is generally for the sum of (1) the corporation's basis in the donated property plus (2) one-half of the unrealized appreciation (i.e., one-half of the difference between the fair market value of the property determined at the time of the contribution and the donor's basis in the property). However, in no event is the deduction under the special rule allowed for an amount which exceeds twice the basis of the property.

To qualify for this special deduction rule, a corporate contribution of scientific equipment to a college or university must satisfy the following requirements:

(1) The property contributed was constructed by the corporate donor; [2]

(2) The contribution is made within two years of substantial completion of construction of the property;

(3) The original use of the property is by the college or university;

(4) Substantially all (at least 80 percent) of the use of the scientific equipment or apparatus by the college or university is for re-

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[1] Under a special rule enacted in 1976, an augmented charitable deduction also is allowed for corporate contributions of certain types of ordinary-income property donated for the care of the needy, the ill, or infants (sec. 170(e)(3)).

[2] Property is to be treated as constructed by the taxpayer for purposes of this rule only if the cost of parts (other than parts manufactured by the taxpayer or a related person) used in construction does not exceed 50 percent of the taxpayer's basis in the property.

search (within the meaning of sec. 174), or for research training, in the United States in the physical or biological sciences; [3]

(5) The property is not transferred by the donee in exchange for money, other property, or services; and

(6) The taxpayer receives the donee's written statement representing that the use and disposition of the property contributed will be in accordance with the last two requirements.

Prior Congressional Action

The provisions of H.R. 701 are substantially similar to the provisions of H.R. 5573 (97th Cong.) as reported, with amendments, by the Committee on Ways and Means in 1982 (H. Rep. No. 97-836). The House of Representatives passed H.R. 5573 on September 22, 1982, by vote of 323-62. The Senate Committee on Finance also reported H.R. 5573, with additional amendments (S. Rep. No. 97-647). No further action was taken on H.R. 5573 during the 97th Congress.

Explanation of the Bill

Overview

The bill would provide a special deduction rule for contributions, made by corporations during 1984, of certain newly manufactured computers to primary or secondary schools for the use at the school directly in the education of students.

Requirements for favorable treatment

In order for the special deduction rule to apply under the bill, there must be a contribution by a corporation[4] of tangible personal property which satisfies all of the following requirements. The bill would provide expressly that a gift made under the bill is to be treated as a charitable contribution.[5]

1. Qualifying computer equipment

The donated property must be tangible personal property which is inventory (within the meaning of Code sec. 1221(1)) and must be computer equipment as defined in the bill. Also, the computer equipment must be assembled by the taxpayer, and the taxpayer must be regularly engaged in the business of assembling and selling such equipment.

The bill defines computer equipment qualifying for the special deduction rule to mean—

(a) a data processor which can be programmed in at least three standard computer languages, which has a random access memory

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[3] For purposes of this limitation on research use, and on research training use, the physical sciences include physics, chemistry, astronomy, mathematics, and engineering, and the biological sciences include biology and medicine.

[4] The special deduction rule does not apply in the case of a corporation which is a subchapter S corporation, as defined in sec. 1371(b); a personal holding company, as defined in sec. 542; or a service organization, as defined in sec. 414(m)(3).

[5] Court decisions have held that if a transfer to a charitable organization results in a benefit to the donor, no charitable deduction is allowed. For example, the U.S. Court of Claims has upheld denial of charitable deductions claimed by a manufacturer for discounts on purchases of sewing machines by schools, where the court had found that the discounts were offered for the predominant purpose of enlarging the market for the manufacturer's brand of sewing machines (*Singer Co.* v. *U.S.*, 449 F.2d 413 (Ct. Cl. 1971)).

with a capacity for at least 32,000 bytes,[6] and which is (or can be) connected with a screen for visual display of the data;

(b) a display screen, a printer, or a disc drive, but only if such equipment is donated by the taxpayer for use in connection with such a data processor donated by the taxpayer; and

(c) any installation equipment [7] for equipment, donated by the taxpayer, which is described in (a) or (b) above.

2. Eligible donees

The computer equipment must be donated either to an educational organization (within the meaning of sec. 170(b)(1)(A)(ii),[8] or to a primary or secondary school operated as an activity of a tax-exempt section 501(c)(3) organization (such as a church), provided that such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Also, the donee must be located in the United States and may not be an institution of higher education (as defined in sec. 3304(f)).[9]

3. Time of contribution

The contribution must be made within six months after substantial completion of assembly of the computer equipment, and must be made during the calendar year 1984.

4. Limitation to new equipment

The original use of the donated computer equipment must be by the donee.

5. Student education use requirement

Substantially all of the use of the donated computer equipment by the donee is at the location of the donee and is directly in the education of students.

6. Prohibition on donee sale

The donated computer equipment may not be transferred by the donee in exchange for money, other property, or services.

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[6] The capacity is to be determined by reference to the donated computer equipment, without regard to additional random access memory capacity which could be achieved through use of additional equipment which is not donated.

[7] The term installation equipment is limited to cables and display screen, printer, or cassette recorder "hook up" equipment such as modulators, interface boards, or interface cards.

[8] An educational organization is described in sec. 170(b)(1)(A)(ii) "if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools. * * *" and includes both public and private schools (Treas. Reg. sec. 1.170A-9(b)(1)).

[9] An institution of higher education, as defined in sec. 3304(f), means an educational institution which (1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; (2) is legally authorized to provide a program of education beyond high school; (3) provides an educational program for which it awards a bachelor's or higher degree, provides a program which is acceptable for full credit toward a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and (4) is a public or other nonprofit institution.

7. Written confirmation

The donor corporation must receive a written statement from the donee representing that the use and disposition of the donated computer equipment will be in accordance with the preceding two requirements.

8. Distributional requirements

The contribution must be made pursuant to a written plan of the donor corporation which shall seek to prevent undue concentrations of the donor's contributions of computer equipment from either a geographic standpoint or from the standpoint of the relative economic status of the students of the donees which receive contributions from the donor. The bill would not require that the donor's actual contributions in fact satisfy these distributional requirements.

Allowable deduction

If all the requirements of the bill are satisfied, the charitable deduction allowed by the bill generally would be for the sum of (1) the corporation's basis in the property, plus (2) one-half of the unrealized appreciation (i.e., one-half of the difference between the fair market value of the property and the basis).[10]

However, in no event would a deduction be allowed for any amount in excess of twice the basis of the property. For example, if a manufacturer makes a qualifying contribution of a computer with a cost basis of $5X, and a fair market value of $16X, the bill would allow the manufacturer a charitable deduction of $10X (twice the $5X basis, since that amount is less than basis plus one-half of the unrealized appreciation). If instead the fair market value of the computer is $11X, the deduction would be $8X ($5X basis plus one-half of the $6X difference between value and basis).

Effective Date

The augmented deduction rule provided by the bill would be effective for taxable years ending after 1983, with respect to qualifying contributions of computer equipment made during 1984.

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[10] Where donated property is of a type which the taxpayer sells in the course of its business, the fair market value is the price which the taxpayer would have received if the taxpayer had sold the contributed property in the usual market in which it customarily sells, at the time and place of the contribution, and, in the case of a contribution of goods in quantity, in the quantity contributed. The usual market of a manufacturer or other producer consists of the wholesalers or other distributors to or through whom it customarily sells; but if it sells only at retail, the usual market consists of its retail customers (Treas. Reg. sec. 170A-1(c)(2)).